Supreme Court, U.S.
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No. 99-1361

IN THE

Supreme Court of the United States

ELIZABETH CAPROTTI,

Petitioner,

v.

TOWN OF WOODSTOCK, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

BRIEF IN OPPOSITION FOR TOWN OF WOODSTOCK RESPONDENTS

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COUNTER-STATEMENT OF THE FACTS AND THE CASE

The Town of Woodstock (Town) is an authorized franchiser of public access cable television, under 47 U.S.C. § 522 and New York State Public Service Law § 219. Beginning in 1986, the Town contracted with Kingston Cablevision, Inc. for the operation of a cable television system. Pursuant to the terms of the contract, Kingston Cablevision agreed to provide public access capability to the Town. The Town thereupon created a volunteer committee, known as the Woodstock Public Access Committee (WPAC), which formulated rules and procedures to be used in the operation of the public access channel.

Respondents herein are the Town, its officials, employees, and the volunteer members of the WPAC. Petitioner, who is a private individual, brought this action asserting that a program aired on respondents' public access television channel which was hosted and produced by Ronald Rybacki was, *inter alia*, defamatory and caused intentional emotional harm.[1]

Following the completion of discovery, respondents moved for summary judgment on the grounds that 47 U.S.C. § 555a(a) limits plaintiff to injunctive and declaratory relief. At the time respondents moved for summary judgment, Rybacki's show was no longer broadcasting. The petitioner cross-moved for partial summary judgment on the issue of liability. The New York Supreme Court, Ulster County,

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1. Ronald Rybacki was also named as a defendant in petitioner's action. Mr. Rybacki defaulted and the proceedings herein do not apply to the petitioners' judgment against him.

granted respondents' motion, dismissing the claim on the ground that respondents' actions with regard to petitioner and Mr. Rybacki fell under the immunity provision of § 555a(a) and, therefore, petitioner's remedy was limited to injunctive relief.

These decisions were later affirmed by both the New York Appellate Division – Third Department, 256 N.Y. App. 2d 978, 681 N.Y.S.2d 991 (3d Dept. 1997), and the New York Court of Appeals, 74 N.Y.2d 37, 699 N.Y.S.2d 707 (N.Y. 1991). The New York Court of Appeals in its review of the petitioner's appeal of the lower Courts' decision stated that "[t]he issue before us is whether 47 USC §555a(a) immunizes the municipality from liability for monetary damages." *Id.* at 37. Thereafter, it concluded that the petitioner's "claim arises from the regulation of cable service" and upheld the dismissal of petitioner's complaint against the respondents. *Id.*

Contrary to petitioner's representation it its statement of "The Present Action", respondents have not conceded that Rybacki's statements were defamatory per se or whether, if substantiated, respondents are jointly liable with Rybacki for defamation or negligence. *See* Petition for Writ of Certiorari, p.5. Furthermore, respondents have not admitted that "they were 'publishers' of the alleged defamatory statements under New York common law, and would otherwise be jointly liable to petitioner." *Id.*

SUMMARY OF THE ARGUMENT

Petitioner presents questions of whether Section 635A(a) of the Cable Television Consumer Protection and Competition Act of 1992 (the Act), codified at 47 U.S.C.

§ 555 a(a), preempts the petitioner's State common law and tort claims for money damages against the respondents, a municipal franchising authority, its officials and employee. Petitioner argues that the New York Court of Appeals improperly held that 47 U.S.C. § 555a(a) immunizes municipalities from liability for monetary damages when a claim brought by a private individual against the municipality arises from the regulation of cable service. According to the petitioner, the language of the statute does not expressly preempt state law causes of action and any bar on lawsuits which the statute may have should not be extended to private persons. Furthermore, petitioner asserts that she has been deprived of all rights to recover damages for defamatory broadcasts made on public access stations operated by a municipality.

1. The plain language of 47 U.S.C. § 555a(a) clearly preempts a private individuals' state common law tort claims for money damages against a municipal franchising authority. § 555a is headed "Limitation on franchising authority liability" and subsection 555a(a) is entitled "Suits for damages prohibited". The language of the statute clearly states that

> any court proceeding pending on or initiated after October 5, 1992, involving any claim against the franchising authority or governmental entity, or any official, member, employee or agent of such authority or entity, arising from the regulation of cable services or from a decision of approval or disapproval with respect to a grant, renewal, transfer or amendment of a franchise, any relief, to the extent such relief is required by any provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief.

42 U.S.C. § 555a(a). The statute unequivocally states that monetary damages for "any claim which arises from the regulation of cable services" are prohibited. Accordingly, the Court need not go beyond the language of the statute to determine that Congress intended for any private lawsuits seeking claims for money damages as against municipal franchising authorities are not permitted.

2. Petitioner is not deprived of judicial recourse for those injuries which she may have suffered as a result of illegal conduct. First, as against the franchising authority, an aggrieved individual may seek injunctive and declaratory relief. In addition, a private individual is not limited in the remedies she may seek from the producer of the subject broadcast. As in this case, the victim of the alleged illegal conduct can seek recourse against the alleged perpetrator of the illegal actions.

3. There is no conflict between the decisions of the New York Court of Appeals and United States Circuit Court cases. Petitioner relies on *Jones Intercable of San Diego, Inc. v. City of Chula Vista*, 80 F.3d 320 (9th Cir. 1996) and *Time Warner Entertainment Company, LP v. Federal Communications Commission*, 93 F.3d 957 (D.C. Cir. 1996) to assert that § 555a(a) has a limited purpose of protecting local franchising authorities in damage suits brought by aggrieved cable system operators over franchising decisions. However, petitioner's reliance on these cases to create an alleged conflict is simply misapplied. Each of these cases involved parties within the cable industry. There is no language within the holding of either the Ninth Circuit or the District of Columbia Circuit which asserts that the protection afforded to the municipality is not also extended to claims made by private individuals. Indeed, neither of the

Circuit Court decisions address claims made by private individuals. Therefore, there is no conflict in the lower courts' decisions which must be resolved by this Court.

4. The New York Court of Appeals' holding does not conflict with this Court's established principles of preemption. The language of § 555a(a) clearly identifies the domain which is expressly preempted by the language of the statute. However, if one is to look beyond the language of the preemptive statute to review the statutory framework and Congressional intent, such review will also reveal that Congress had the expressed intent of preempting lawsuits brought against municipal franchising authorities, regardless of whether they were brought by cable operators or private individuals. The Congressional intent specifically addresses its concerns of excessive damage liability which could be imposed upon municipal franchising authorities. Moreover, the scope of the statute's immunity was significantly broadened during the course of the legislative process in enacting the subject statute. Therefore, Congress' expansion of the protection to include all claims which may be brought against the franchising authority is clearly evident within the Congressional record.

5. Petitioner's equal protection argument should not be considered because it was not addressed by the Court below. However, the preemption of private tort actions for monetary damages is consistent with Congress' grant of immunity from liability where such immunity has been explicitly granted and there is a legitimate governmental interest for their action. Here, Congress' interest was to protect municipalities from costly damages awards. Therefore, petitioner's equal protection rights have not been violated.

REASONS FOR DENYING THE WRIT

I.

THE STATUTORY LANGUAGE OF § 555a(a) IS CLEAR AND UNAMBIGUOUS.

A. The Preemptive Language of Section 555a(a) identifies Congress' clear and manifest purpose of precluding any money damage claims against municipal franchising authorities.

It is well established that an inquiry into the legislative intent of the statute must be primarily discerned from the plain language of the statute. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996). When the statutory text is clear, there is no need to turn to its legislative history for explanation of its meaning. *Ratzlaf v. U.S.*, 114 S. Ct. 655, 510 U.S. 135 (1994); *Barnhill v. Johnson*, 112 S. Ct. 1386, 503 U.S. 393 (1992).

The language of § 555a(a) is clear and unambiguous. *Coplin v. Fairfield Public Access Television Committee*, 111 F.3d 1395, 1407 (8th Cir. 1997). The language of the statute is as follows:

> Section 555a. Limitation of franchising authority liability.
>
> (a) Suits for damages prohibited.
>
> In any court proceeding pending on or initiated after October 5, 1992, involving any claim against a franchising authority or other governmental

> entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service or from a decision of approval of disapproval with respect to the grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief.

42 U.S.C. § 555a(a). Under the plain language of the statute, a municipal franchising authority is immune from any suits arising from its regulation of cable service. Certainly, there is no limitation stated or implied in the immunity extended to any action by a franchising authority which involves the regulation of the content carried on public access cable services. *Coplin*, 111 F.3d at 1408.

Similar to the petitioner in *Coplin*, petitioner in the pending action is attempting to create an ambiguity in the language of the Act where none exists. The nucleus of petitioner's claim is that the respondents improperly regulated the actions of Ronald Rybacki when he produced a program on Woodstock's local public access cable television station. Such claim, by its nature, is exactly what is addressed in the plain language of § 555a(a). Therefore, any monetary relief which petitioner seeks from this franchising authority is expressly barred by the statute.

B. Petitioner's reliance on *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996), is misapplied.

Medtronic clearly states that, in addressing preemption, "Congress' intent, of course, primarily is discerned from the

language of the preemption statute and the 'statutory framework' surrounding it (citations omitted)." 518 U.S. at 485. Once the domain which is preempted is identified, there is no reason to go beyond the language of the statute. *Id.* at 484.

In *Medtronic, Inc.*, this Court addressed the issue of whether there was federal preemption of state tort liability for medical devices under the Medical Device Amendments of 1976 (MDA). There, it was held that the state products liability claims involving an allegedly defective pacemaker were not preempted by the MDA which prohibits States from maintaining any requirement different from or in addition to the requirements under the MDA. The plurality opinion of the Court was based on an analysis of the legislative history and content of the statute. It was from that interpretation that this Court concluded that Congress did not intend to preempt the particular tort claims in that case.

There, Justice Stevens, in writing the plurality opinion for the Court, began by considering the plain language of the preemption language. However, when an ambiguity arose regarding the subject statute, the court turned to an inquiry beyond the language to determine Congress' intent. *Medtronic*, 518 U.S. at 489. Justice Stevens specifically points out that if Congress intended to include all common law causes of action, it would have used language such as "remedy" rather than "requirement" in the language of the statute. *Id.*

In the pending matter, however, an ambiguity in the statutory language does not exist. Congress does not hide its intent to preempt all causes of action against the municipal franchising authorities related to its regulation of cable

stations. First, the subject section of the Act is headed "Limitation of franchising authority liability" and "Suits for damages prohibited". Second, the statute specifically refers to "any claims" which arise from the regulation of cable service which are brought after October 5, 1992. In addition, Congress further extended the immunity, by using the conjunction "or" to add that the immunity also extends to any decisions with respect to the grant, renewal, transfer or amendment of a franchise. It is clear from the plain language of the statute that Congress intended to extend the protection from costly damage liability to all claims, regardless of whether they were brought by cable operators or any other entity.

C. Field and Conflict Preemption should not be considered.

Petitioner also submits that preemption is not appropriate because there is no field or conflict preemption between the state and federal law. However, an analysis of field or conflict preemption is unnecessary. An inquiry as to whether state law is preempted by a conflict with federal law or whether federal law occupies the legislative field, is only necessary when there is an absence of an express Congressional command in the language of the statute. *Cipollone v. Liggett Group*, 505 U.S. 504, 516 (1992). That simply is not the case here. In sum, the structure and purpose of the statutes' preemption language is clearly stated with the words of the statute. Therefore, any further inquiry into Congressional intent is not required.

D. The Congressional Intent Supports Preemption.

Assuming *arguendo*, that the analysis of Congressional intent required a review of the Congressional record, the

resulting immunity to franchising authorities would remain the same. The Congressional record confirms the plain language of the statute that preempts damage claims brought by any individuals. As stated by the Ninth Circuit in *Jones Intercable of San Diego, Inc.*, "[s]ection 555a(a) promotes Congress's substantial interest in having municipalities regulate cable operators without fear of potentially overwhelming damage awards." 80 F.3d at 326; *see also* Leglislative History of the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, *reprinted in* Congressional Information Services, Inc., 92 CIS PL 102385, 102 CIS Legis. Hist. P.L. 385 (1992) (stating under the Summary of Legislative History that the Act "limits the liability of cable franchising authorities in lawsuits arising from cable service franchising *and* regulation [emphasis added].")

Moreover, the New York Court of Appeals specifically addressed this issue and found that the Congressional Record supported the expressed preemption of monetary damages claims brought by private individuals, like that of petitioner, against municipal franchising authorities. They stated, in pertinent part,

> Nothing in §555a(a)'s legislative history diminishes the breadth of the immunity conferred by the statute's plain terms. We agree that, as plaintiffs point out, the immunity provision was motivated by the need to protect local franchising authorities "from being pressured into making unmeritorious franchising decisions by the threat of expensive damages litigation by cable companies" (see, 138 CongRec H6487, H6530 [July 23, 1992]). Indeed, the original provision passed by the Senate immunized local franchising authorities from monetary liability solely "in cases where the

> franchising authorities are charged with violating a cable operator's First amendment rights arising from actions authorized or required by [the 1984] act" (HR ConfRep No. 102-862, 102d Cong, 2d Sess, at 98, reprinted in 1992 US Code Cong & Admin News 1231, 1280). The scope of the statute's immunity was, however, significantly broadened during the course of the legislative process.
>
> In the end, Congress expanded the Senate's original proposed immunity provisions by adopting the significantly broadened House amendment. The final version thus extends municipal immunity to "any claim * * * arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer or amendment of a franchise" (see, HRConfRep No. 102-862, op. Cit., at 99 [emphasis added]). If Congress was concerned exclusively with immunity from suits by aggrieved cable operators, it would not have deliberately enacted the additional sphere of immunity from any claims "arising out of the regulation of cable service."

74 N.Y.2d 37.

In light of the foregoing, Congress' intent to provide immunity to the franchising authorities from claims brought by cable operators *and* other private entities is expressed in both the language of the statute and in its legislative history. Therefore, the language of § 555a(a) of the Act undeniably grants respondents immunity from petitioner's claims.

II.

THERE IS NO CONFLICT IN THE LOWER COURT DECISIONS.

Plaintiff attempts to create a conflict between the Courts where none exist. The New York Court of Appeals' interpretation of § 555a(a) does not conflict with those of the Courts of Appeals for the Ninth and District of Columbia Circuits. Relying on *Time Warner Entertainment Company, LP v. Federal Communications Commission*, 93 F.3d 957 (D.C. Cir. 1996) and *Jones Intercable of San Diego, Inc. v. City of Chula Vista*, 80 F.3d 320 (9th Cir. 1996), petitioner asserts that these circuits have held that "the sole purpose of the statute was to protect local franchising authorities from damage suits brought by aggrieved cable systems operators over franchising decisions." *See* Petition for a Writ of Certiorari, page 25. This analysis, distorts the Courts' holdings and improperly places limitations on the protection afforded by § 555a(a) to municipal franchising authorities.

In *Time Warner Entertainment Company, LP*, the petitioners were cable television systems owners, operators, and programs who brought an action challenging the constitutionality of certain sections of the Act and the Cable Communications Policy Act of 1984. 93 F.3d at 962. Among the provisions challenged was 47 U.S.C. § 555a(a). There, the petitioners argued that "by prohibiting damages against municipalities, this section prevents cable operators from protecting their First Amendment rights and permits municipal licensing authorities to censor the contents of cable operators' speech." *Id.* at 980. However, the D.C. Circuit disagreed with such reasoning. In upholding the constitutionality of § 555a(a) the Court stated that it could

not understand "how giving local franchising authorities immunity from damages amount to direct restriction on the speech of cable operators". *Id.* It further stated that all of the aggrieved's remedies were not restricted since declaratory and injunctive relief was still permitted. *Id.*

In analyzing whether this provision could prevent free speech, the Court mentions that Congress sought to give municipal franchising authorities protection from threats of suits by cable operators. However, nothing in the language of the Court's decision, or in the actual statute, in any way limits the immunity only to suits asserted by cable operators. Indeed, the protection is extended to "any claims", regardless of whether it is an individual, corporation or other entity bringing the suit.

In *Jones Intercable of San Diego*, a cable television operator brought suit against the City alleging that the City had violated its federal statutory and constitutional rights when it refused to permit the operator to operate cable television systems in areas which were newly annexed by the City without first obtaining a citywide franchise. 80 F.3d at 322. Again, it was argued that § 555a(a) violated the cable operators' First Amendment rights. However, the Court held that the plaintiff's rights were not violated and the Court concluded that § 555a(a)

> promotes Congress's substantial interest in having municipalities regulate cable operators without fear of potential overwhelming damage awards. The statute is aimed at improving Congress' scheme for regulating cable systems, not at suppressing particular view points held by cable system operators. * * *

> Legislative findings of the damage claims municipalities face before the civil immunity provision became law demonstrate that Congress' goal of giving municipalities the ability to regulate without fear of large damage awards would not be served as well absent the provision. Moreover, any relaxation of the prohibition on damages would impose some regulatory cost on the city.

Id. at 326.

Each of the Circuit Courts' interpretation of the purpose of § 555a(a) supports respondents' immunity from the action brought by petitioner. Since Congress' intent was to protect municipalities from "overwhelming damage awards", this protection must extend to claims brought by both cable operators and any other individuals who bring suit as a result of a municipal franchising authority's regulation of its cable service.

III.

PETITIONER HAS OTHER MEANS OF JUDICIAL RECOURSE.

Petitioner argues that she has been stripped of her judicial recourse in recovering damages for the defamation against her. This is simply untrue. It is obvious from the language of the statute that individuals may bring an action for injunctive or declaratory relief if they believe that their rights have been violated. 47 U.S.C. § 555a(a). In addition, since the statutory immunity is limited to claims brought against franchising authorities and its officials, employees or agents, an aggrieved party can still maintain an action against a

producer, or other publisher of a show, when an alleged illegal broadcast has been aired.

In the pending action, the petitioner has used the other judicial recourse available to her. Indeed, petitioner has brought an action against Ronald Rybacki, the producer and show host who made the statements about petitioner on a public access television program. Petitioner has obtained a default judgment in her action against Rybacki and an inquest is pending.

Also, petitioner sought injunctive relief to terminate Rybacki's television show. However, Rybacki's show was no longer broadcasting at the time the respondents moved for summary judgment in the lower Court. Therefore, such application became moot.

IV.

PETITIONER'S EQUAL PROTECTION RIGHTS ARE NOT VIOLATED.

Petitioner's equal protection argument was not raised in the Court below, and therefore, is not properly raised before this Court. However, an inquiry into Congress' intent in enacting § 555a(a) clearly demonstrates that it had a "rational basis" for the immunity granted to municipal franchising authorities.

The Equal Protection Clause of the Fourteenth Amendment guarantees that classifications imposed by law will not be used to arbitrarily burden a group or class. *New York City Transit Authority v. Beazer*, 440 U.S. 568, 587, 99 S. Ct. 1355, 1367 (1979). It is well established that

where the classifications are not based on race, gender, religion or alienage, and the law is considered to be social or economic in nature, the law will be permitted to stand as long as it is rationally related to a legitimate state interest. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 105 S. Ct. 3249, 3254 (1985); *New Orleans v. Dukes*, 427 U.S. 297, 97 S. Ct. 2513, 2516 (1976).

It is undisputed that the applicable standard to apply in reviewing the constitutionality of § 555a(a) is a "rational basis" test. *See* Petition for Writ of Certiorari, Point IV. It is further established that, as stated above in Point I, Congress granted the immunity afforded to municipal franchising authorities because of its goal to give municipalities the ability to regulate its cable operation without fear of large damage awards. *Jones Intercable of San Diego, Inc.*, 80 F.3d at 326. This governmental interest clearly justifies, and is a rational basis for, Congress' preclusion of monetary damage awards in actions against the municipal franchising authorities. *Id.* at 327. Therefore, petitioner's equal protection argument fails.

CONCLUSION

In light of the forgoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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